

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BOX ELDER CREEK BASIN (39E)
PRELIMINARY DECREE

CLAIMANTS: Joan C. Marshall; Wesley D. Marshall

CASE 39E-0220-P-2022

39E 124248-00

OBJECTOR: USA (Dept. of Interior Bureau of Land Mgmt.)

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Wesley D. Marshall and Joan C. Marshall own stock claim 39E 124248-00.

The claim was decreed with DNRC issue remarks:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 08/01/2018 , THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY WESLEY D & JOAN C MARSHALL FAMILY TRUST.

POINT OF DIVERSION AND MEANS OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SWSE SEC 4 TWP 2S RGE 57E CARTER COUNTY.

2. The first issue remark indicates that the place of use described by claim 39E 124248-00 is owned by a trust. The trust is in the name of record owners Wesley D. Marshall and Joan C. Marshall; no further action needs to be taken.

3. The second issue remark notes that the DNRC modified the point of diversion and means of diversion after the Temporary Preliminary Decree in Basin 39E and before the Preliminary Decree. No objections were filed to the point of diversion and means of diversion elements, and no further action needs to be taken.

4. The place of use issue remark notes the place of use for claim 39E 124248-00 appears to need the following modification:

Place of Use:

| ID | Acres | Govt Lot | Qtr Sec | Sec | Twp | Rge | County |
|----|-------|----------|---------|-----|-------|-----|--------|
| 1 | | | SWSE | 4 | 2S 36 | 57E | CARTER |

5. The United States of America (Bureau of Land Management) objected to claim 39E 124248-00 indicating the modification described in Finding of Fact No. 4 needs to made to the claim to resolve the Objection.

6. On September 3, 2020, Claimant Joan C. Marshall filed a Motion to Amend claim 39E 124248-00 indicating the place of use should be modified as follows:

Place of Use:

| ID | Acres | Govt Lot | Qtr Sec | Sec | Twp | Rge | County |
|----|-------|----------|---------|-----|-------|-----|--------|
| 1 | | | SWSE | 4 | 2S 36 | 57E | CARTER |

A copy of the Motion to Amend is attached to this Order.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The point of diversion and means of diversion issue remarks decreed on claim 39E 124248-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 39E 124248-00 should be modified as shown in Finding of Fact No. 4.

2. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Eve W. McDonald, Trial Attorney
Natural Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
999 18th St, South Terrace, Suite 370
Denver, CO 80202
(303) 844-1381
Evelyn.mcdonald@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

Service via USPS Mail:

Joan C. Marshall; Wesley D. Marshall
1721 Chalk Buttes Rd.
Ekalaka, MT 59324-8502

FILED

SEP 03 2020

Montana Water Court

STATE OF MONTANA)
) ss.
COUNTY OF CARTER)

VERIFIED MOTION TO AMEND WATER RIGHT CLAIM

(Describe the proposed amendment, and the historical use of the water right as it relates to the proposed amendment. The following changes should be made to correct the abstract of this claim so it reflects this right as it existed prior to July 1, 1973. If the proposed amendment involves the place of use, acres irrigated, point of diversion, or source of the water right, attach a map showing the proposed amendment.)

WATER RIGHT NO: 39E 124248 00

OWNER: Joan C & Wesley D Marshall

The place of use need to be corrected to reflect the historic use. Therefore, it is requested that the below be amended to:

PLACE OF USE:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|
| #1 | | | SWSE | 4 | 2S | 57E |

I/We declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct. (Please include signatures of all owners. Additional proceedings will be required if all signatures are not included.)

Joan C. Marshall 8/24/20
Joan C Marshall Date

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O.BOX 201601 HLLNA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 39E 124248-00 STATEMENT OF CLAIM

Version: 2 -- REEXAMINED

Version Status: ACTIVE

Owners:

JOAN C MARSHALL
1721 CHALK BUTTES RD
EKALAKA, MT 59324-8502

WESLEY D MARSHALL
1721 CHALK BUTTES RD
EKALAKA, MT 59324

Priority Date: SEPTEMBER 19, 1943

Enforceable Priority Date: SEPTEMBER 19, 1943

Type of Historical Right: USE

Purpose (use): STOCK

Maximum Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Maximum Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF BUFFALO CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | SESWSE | 4 | 2S | 57E | CARTER |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

Reservoir: ON STREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | E2SWSE | 4 | 2S | 57E | CARTER |

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|---------------------|------------|---------------|
| 1 | | | SWSE | 4 | 28 2S | 57E | CARTER |

Geocodes/Valid: 42-0856-04-2-01-01-A405 - Y

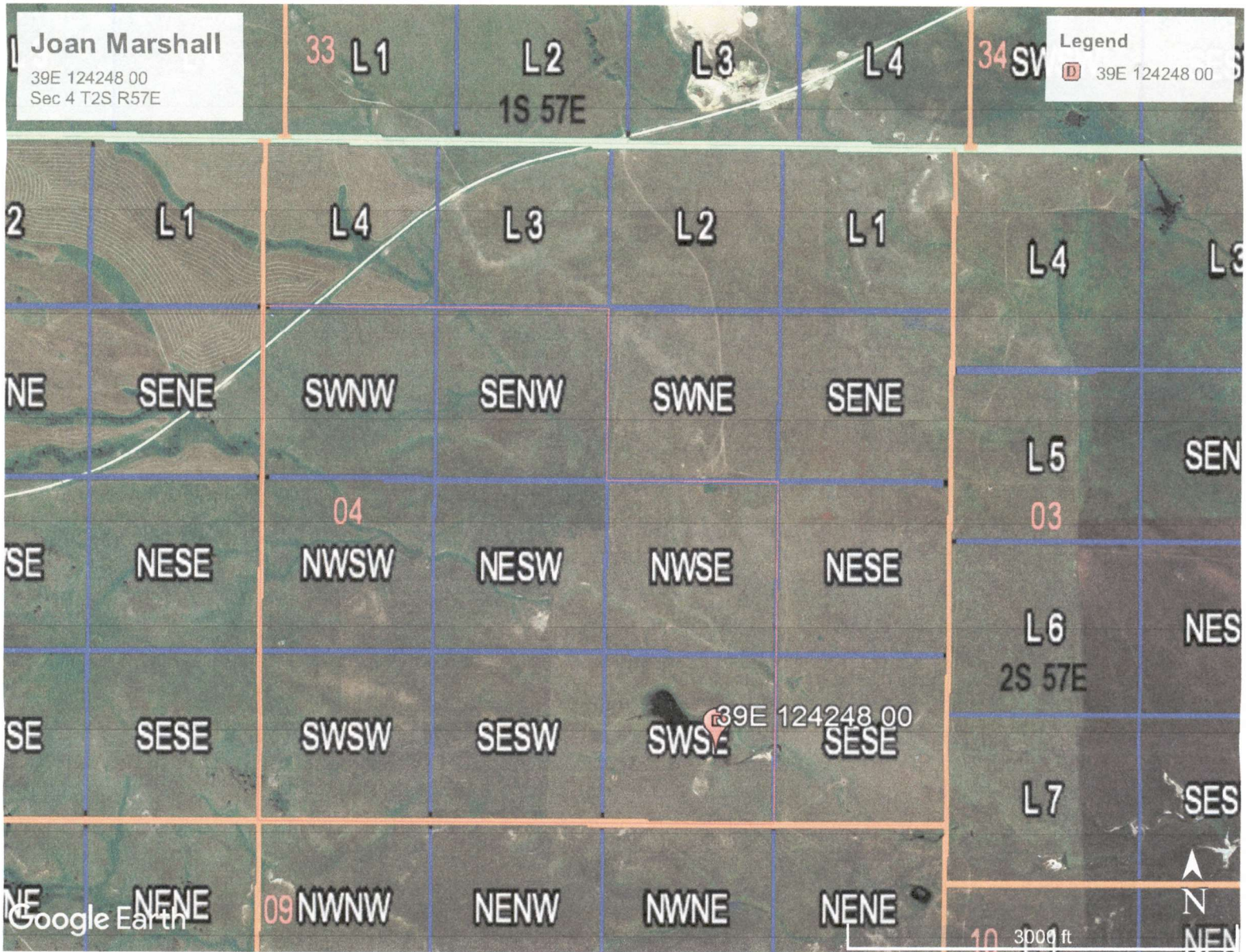
Remarks:

NOTICE OF WATER RIGHT TRANSFER RECEIVED 06/20/85.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 08/01/2018, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY WESLEY D & JOAN C MARSHALL FAMILY TRUST.

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Joan Marshall

39E 124248 00
Sec 4 T2S R57E closeup

NWSE

Legend

 39E 124248 00

SWSE

39E 124248 00

Google Earth

NWNE

700 ft

N

Montana Water Court

PO Box 1389

Bozeman Montana 59771-1389

The reason that Wesley D Marshall did not sign this **VERIFIED MOTION TO AMEND WATER RIGHT CLAIM** is that he died on October 11, 2019.

Joan C. Marshall

8/24/20

Date

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 124248-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WESLEY D MARSHALL
1721 CHALK BUTTES RD
EKALAKA, MT 59324 8502

JOAN C MARSHALL
1721 CHALK BUTTES RD
EKALAKA, MT 59324 8502

Priority Date: SEPTEMBER 19, 1943

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| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | SESWSE | 4 | 2S | 57E | CARTER |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | E2SWSE | 4 | 2S | 57E | CARTER |

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | SWSE | 4 | 2S | 57E | CARTER |